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 12 FRANCES TURNER

13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA
 15 (San Francisco Division)

17 FRANCES TURNER,
 18 Plaintiff,

19 v.

20 MENLO COLLEGE, and DOES 1 TO 10,
 21 inclusive,
 22 Defendants.

Case No.: 17-cv-05591-EMC

Hon. Edward M. Chen

[PROPOSED] STIPULATED
 PROTECTIVE ORDER

Complaint filed: September 27, 2017

Trial Date: April 1, 2019

23
 24
 25 1. PURPOSES AND LIMITATIONS

26 Plaintiff FRANCES TURNER (“Turner”) and Defendant MENLO COLLEGE (Turner and
 27 Menlo College are collectively referred to as the “Participating Parties,” or individually as a
 28 “Participating Party”) agree that disclosure and discovery activity in this action are likely to involve

1 production of confidential, proprietary, or private information for which special protection from
2 public disclosure and from use for any purpose other than prosecuting this litigation may be
3 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following
4 Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket
5 protections on all disclosures or responses to discovery and that the protection it affords from public
6 disclosure and use extends only to the limited information or items that are entitled to confidential
7 treatment under the applicable legal principles. The parties further acknowledge, as set forth in
8 Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential
9 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the
10 standards that will be applied when a party seeks permission from the court to file material under
11 seal.

12 2. DEFINITIONS

13 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
14 information or items under this Order.

15 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is
16 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of
17 Civil Procedure 26(c) and/or that:

18 (a) Contain financial or other proprietary information that is held confidential by a party;

19 (b) Include an individual's personal identifying information (such as his or her name, address,
20 telephone number, social security number, driver's license number, bank account numbers, or other
21 private information) that a party to this litigation treats as confidential;

22 (c) Contain private information relating to an individual who is not a party to the present
23 litigation;

24 (d) Describe, contain, or disclose internal corporate or business information that is
25 legitimately held confidential within the business and not disclosed outside the business organization,
26 except to its agents, consultants, attorneys, accountants, or similarly situated affiliates of the business;

27 (e) Contain medical records or other personal health care information, even if said health
28

1 care information is produced by a third party pursuant to stipulation or subpoena;

2 (f) Are encompassed by a confidentiality agreement executed by one or more of the parties;

3 or

4 (g) Contain information that otherwise qualifies for protection as confidential pursuant to
5 standards developed under applicable law.

6 (h) Confidential information produced pursuant to this Order shall be disclosed, revealed, or
7 disseminated only to the Court, the court personnel or staff, Participating Parties, counsel of record
8 for the Participating Parties, their associate attorneys, paralegals, secretaries, clerical staff and to the
9 “QUALIFIED PERSON(S)” designated below.

10 (i) Witnesses;

11 (ii) Experts and consultants retained by counsel in the prosecution, defense, or
12 settlement of this action;

13 (iii) Court reporter(s) employed in this action;

14 (iv) A witness at any deposition;

15 (v) A Participating Party, or an officer, director, managing agent, or employee of
16 a Participating Party; and

17 (vi) Any other person as to whom the Participating Parties agrees in writing.

18 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well
19 as their support staff).

20 2.4 Designating Party: a Party or Non-Party that designates information or items that it
21 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

22 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium
23 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
24 transcripts, and tangible things), that are produced or generated in disclosures or responses to
25 discovery in this matter.

26 2.6 Documents: (i) any “Writing,” “Recording,” “Photograph,” “Original,” and
27 “Duplicate”, as defined by Federal Rule of Evidence 1001, which have been produced in discovery in
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1 this Proceeding by any person, and (ii) any copies, reproductions, or summaries of all or any part of
2 the forgoing.

3 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the
4 litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
5 consultant in this action.

6 2.8 House Counsel: attorneys who are employees of a party to this action. House Counsel
7 does not include Outside Counsel of Record or any other outside counsel.

8 2.9 Information: the content of Documents or Testimony.

9 2.10 Non-Party: any natural person, partnership, corporation, association, or other legal
10 entity not named as a Party to this action.

11 2.11 Outside Counsel of Record: attorneys who are not employees of a party to this action
12 but are retained to represent or advise a party to this action and have appeared in this action on behalf
13 of that party or are affiliated with a law firm which has appeared on behalf of that party.

14 2.12 Party: any party to this action, including all of its officers, directors, employees,
15 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

16 2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material
17 in this action.

18 2.14 Professional Vendors: persons or entities that provide litigation support services (e.g.,
19 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing,
20 or retrieving data in any form or medium) and their employees and subcontractors.

21 2.15 Protected Material: any Disclosure or Discovery Material that is designated as
22 “CONFIDENTIAL.”

23 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a
24 Producing Party.

25 3. SCOPE

26 The protection of this Protective Order may be invoked with respect to any Protected
27 Material produced or created in this action that has been designated as “CONFIDENTIAL.” Such
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1 designations may be made by any Party or Non-Party producing materials in this action, or may be
2 made by a Party who determines, in good faith, that materials produced by a Non-Party contain
3 “Confidential” information even though not so designated by the Designating Party. In the event that
4 additional Parties join or are joined in this litigation, they shall not have access to materials
5 designated as “CONFIDENTIAL” pursuant to this Protective Order until they have executed and, at
6 the request of any Party, filed with the court their agreement to be bound by this Order.

7 The protections conferred by this Stipulation and Order cover not only Protected Material (as
8 defined above), but also (1) any information copied or extracted from Protected Material; (2) all
9 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
10 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
11 However, the protections conferred by this Stipulation and Order do not cover the following
12 information: (a) any information that is in the public domain at the time of disclosure to a Receiving
13 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of
14 publication not involving a violation of this Order, including becoming part of the public record
15 through trial or otherwise; and (b) any information known to the Receiving Party prior to the
16 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the
17 information lawfully and under no obligation of confidentiality to the Designating Party. Any use of
18 Protected Material at trial shall be governed by a separate agreement or order.

19 4. DURATION

20 Even after final disposition of this litigation, the confidentiality obligations imposed by this
21 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
22 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
23 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion
24 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time
25 limits for filing any motions or applications for extension of time pursuant to applicable law.

26 5. DESIGNATING PROTECTED MATERIAL

27 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
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1 Non-Party that designates information or items for protection under this Order must take care to limit
2 any such designation to specific material that qualifies under the appropriate standards. The
3 Designating Party must designate for protection only those parts of material, documents, items, or
4 oral or written communications that qualify – so that other portions of the material, documents, items,
5 or communications for which protection is not warranted are not swept unjustifiably within the ambit
6 of this Order.

7 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
8 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily
9 encumber or retard the case development process or to impose unnecessary expenses and burdens on
10 other parties) expose the Designating Party to sanctions.

11 If it comes to a Designating Party’s attention that information or items that it designated for
12 protection do not qualify for protection, that Designating Party must promptly notify all other Parties
13 that it is withdrawing the mistaken designation.

14 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,
15 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or
16 Discovery Material that qualifies for protection under this Order must be clearly so designated before
17 the material is disclosed or produced.

18 Designation in conformity with this Order requires:

19 (a) for information in documentary form (e.g., paper or electronic documents, but excluding
20 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the
21 legend “CONFIDENTIAL” to each page that contains protected material. If only a portion or
22 portions of the material on a page qualifies for protection, the Producing Party also must clearly
23 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

24 A Party or Non-Party that makes original documents or materials available for inspection
25 need not designate them for protection until after the inspecting Party has indicated which material it
26 would like copied and produced. During the inspection and before the designation, all of the material
27 made available for inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has
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1 identified the documents it wants copied and produced, the Producing Party must determine which
2 documents, or portions thereof, qualify for protection under this Order. Then, before producing the
3 specified documents, the Producing Party must affix the “CONFIDENTIAL” legend to each page
4 that contains Protected Material. If only a portion or portions of the material on a page qualifies for
5 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
6 appropriate markings in the margins).

7 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
8 Designating Party identify on the record, before the close of the deposition, hearing, or other
9 proceeding, all protected testimony.

10 (c) for information produced in some form other than documentary and for any other tangible
11 items, that the Producing Party affix in a prominent place on the exterior of the container or
12 containers in which the information or item is stored the legend “CONFIDENTIAL.” If only a
13 portion or portions of the information or item warrant protection, the Producing Party, to the extent
14 practicable, shall identify the protected portion(s).

15 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
16 designate qualified information or items does not, standing alone, waive the Designating Party’s right
17 to secure protection under this Order for such material. Upon timely correction of a designation, the
18 Receiving Party must make reasonable efforts to assure that the material is treated in accordance with
19 the provisions of this Order.

20 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

21 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
22 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
23 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,
24 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a
25 confidentiality designation by electing not to mount a challenge promptly after the original
26 designation is disclosed.

27 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
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1 by providing written notice of each designation it is challenging and describing the basis for each
2 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
3 recite that the challenge to confidentiality is being made in accordance with this specific paragraph of
4 the Protective Order. The parties shall attempt to resolve each challenge in good faith and must begin
5 the process by conferring directly (in voice to voice dialogue; other forms of communication are not
6 sufficient) within 14 days of the date of service of notice. In conferring, the Challenging Party must
7 explain the basis for its belief that the confidentiality designation was not proper and must give the
8 Designating Party an opportunity to review the designated material, to reconsider the circumstances,
9 and, if no change in designation is offered, to explain the basis for the chosen designation. A
10 Challenging Party may proceed to the next stage of the challenge process only if it has engaged in
11 this meet and confer process first or establishes that the Designating Party is unwilling to participate
12 in the meet and confer process in a timely manner.

13 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
14 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil
15 Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the
16 initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process
17 will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a
18 competent declaration affirming that the movant has complied with the meet and confer requirements
19 imposed in the preceding paragraph. Failure by the Designating Party to make such a motion
20 including the required declaration within 21 days (or 14 days, if applicable) shall automatically waive
21 the confidentiality designation for each challenged designation. In addition, the Challenging Party
22 may file a motion challenging a confidentiality designation at any time if there is good cause for
23 doing so, including a challenge to the designation of a deposition transcript or any portions thereof.
24 Any motion brought pursuant to this provision must be accompanied by a competent declaration
25 affirming that the movant has complied with the meet and confer requirements imposed by the
26 preceding paragraph.

27 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.
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1 Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary
2 expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the
3 Designating Party has waived the confidentiality designation by failing to file a motion to retain
4 confidentiality as described above, all parties shall continue to afford the material in question the
5 level of protection to which it is entitled under the Producing Party’s designation until the court rules
6 on the challenge.

7 7. ACCESS TO AND USE OF PROTECTED MATERIAL

8 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
9 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
10 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the
11 categories of persons and under the conditions described in this Order. When the litigation has been
12 terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
13 DISPOSITION).

14 Protected Material must be stored and maintained by a Receiving Party at a location and in a
15 secure manner that ensures that access is limited to the persons authorized under this Order.

16 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by
17 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
18 information or item designated “CONFIDENTIAL” only to:

19 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of
20 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for
21 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is
22 attached hereto as Exhibit A;

23 (b) the officers, directors, and employees (including House Counsel) of the Receiving Party
24 to whom disclosure is reasonably necessary for this litigation and who have signed the
25 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

26 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably
27 necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be
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1 Bound” (Exhibit A);

2 (d) the court and its personnel;

3 (e) court reporters and their staff, professional jury or trial consultants, mock jurors, and
4 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
5 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

6 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
7 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
8 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed
9 deposition testimony or exhibits to depositions that reveal Protected Material must be separately
10 bound by the court reporter and may not be disclosed to anyone except as permitted under this
11 Stipulated Protective Order.

12 (g) the author or recipient of a document containing the information or a custodian or other
13 person who otherwise possessed or knew the information.

14 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
15 OTHER LITIGATION

16 If a Party is served with a subpoena or a court order issued in other litigation that compels
17 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party
18 must:

19 (a) promptly notify in writing the Designating Party. Such notification shall include a copy of
20 the subpoena or court order;

21 (b) promptly notify in writing the party who caused the subpoena or order to issue in the
22 other litigation that some or all of the material covered by the subpoena or order is subject to this
23 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

24 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
25 Designating Party whose Protected Material may be affected.

26 If the Designating Party timely seeks a protective order, the Party served with the subpoena or
27 court order shall not produce any information designated in this action as “CONFIDENTIAL” before
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1 a determination by the court from which the subpoena or order issued, unless the Party has obtained
2 the Designating Party's permission. The Designating Party shall bear the burden and expense of
3 seeking protection in that court of its confidential material – and nothing in these provisions should
4 be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful
5 directive from another court.

6 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN
7 THIS LITIGATION

8 (a) The terms of this Order are applicable to information produced by a Non-Party in this
9 action and designated as "CONFIDENTIAL." Such information produced by Non-Parties in
10 connection with this litigation is protected by the remedies and relief provided by this Order. Nothing
11 in these provisions should be construed as prohibiting a Non-Party from seeking additional
12 protections.

13 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
14 Party's confidential information in its possession, and the Party is subject to an agreement with the
15 Non-Party not to produce the Non-Party's confidential information, then the Party shall:

16 (1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the
17 information requested is subject to a confidentiality agreement with a Non-Party;

18 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this
19 litigation, the relevant discovery request(s), and a reasonably specific description of the information
20 requested; and

21 (3) make the information requested available for inspection by the Non-Party.

22 (c) If the Non-Party fails to object or seek a protective order from this court within 14 days of
23 receiving the notice and accompanying information, the Receiving Party may produce the Non-
24 Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a
25 protective order, the Receiving Party shall not produce any information in its possession or control
26 that is subject to the confidentiality agreement with the Non-Party before a determination by the
27 court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of
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1 seeking protection in this court of its Protected Material.

2 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

3 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
4 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
5 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
6 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c)
7 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
8 Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be
9 Bound” that is attached hereto as Exhibit A.

10 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
11 PROTECTED MATERIAL

12 When a Producing Party gives notice to Receiving Parties that certain inadvertently produced
13 material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties
14 are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to
15 modify whatever procedure may be established in an e-discovery order that provides for production
16 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
17 parties reach an agreement on the effect of disclosure of a communication or information covered by
18 the attorney-client privilege or work product protection, the parties may incorporate their agreement
19 in the stipulated protective order submitted to the court.

20 12. MISCELLANEOUS

21 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
22 its modification by the court in the future.

23 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order
24 no Party waives any right it otherwise would have to object to disclosing or producing any
25 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
26 Party waives any right to object on any ground to use in evidence of any of the material covered by
27 this Protective Order.

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
2

3 LAW OFFICE OF NOAH D. LEBOWITZ
4

5 DATED: April 16, 2018

/s/ Noah D. Lebowitz
6 Noah D. Lebowitz
7 Attorneys for Plaintiff

8 DATED: April 16, 2018

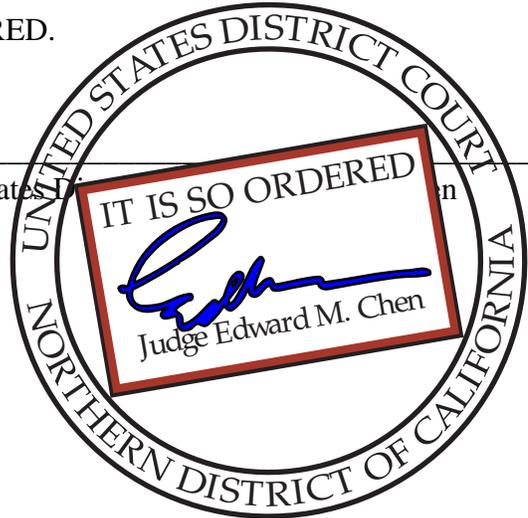
KAUFMAN DOLOWICH & VOLUCK, LLP

/s/ Katherine S. Catlos
9 Katherine S. Catlos
10 Elizabeth Stonhaus
11 Attorneys for Defendant
12 MENLO COLLEGE

13
14 PURSUANT TO STIPULATION, IT IS SO ORDERED.

15 DATED: 4/16/18
16

United States



1
2 EXHIBIT A

3 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

4 I, _____ [print or type full name], of _____
5 [print or type full address], declare under penalty of perjury that I have read in its entirety and
6 understand the Stipulated Protective Order that was issued by the United States District Court for the
7 Northern District of California on [date] in the case of _____ **[insert formal name of the**
8 **case and the number and initials assigned to it by the court]**. I agree to comply with and to be
9 bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that
10 failure to so comply could expose me to sanctions and punishment in the nature of contempt. I
11 solemnly promise that I will not disclose in any manner any information or item that is subject to this
12 Stipulated Protective Order to any person or entity except in strict compliance with the provisions of
13 this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for the Northern
15 District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even
16 if such enforcement proceedings occur after termination of this action.

17 I hereby appoint _____ [print or type full name] of
18 _____ [print or type full address and telephone number] as
19 my California agent for service of process in connection with this action or any proceedings related to
20 enforcement of this Stipulated Protective Order.

21 Date: _____

22 City and State where sworn and signed: _____

23 Printed name: _____

24 Signature: _____

25 4840-2849-2642, v. 1